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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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10/546,627

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Bjoern Beuter

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EXAMINER

ZANELLI, MICHAEL J

ART UNIT

PAPER NUMBER

3661

MAIL DATE

DELIVERY MODE

09/28/2010

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

|                              |                                       |                                       |  |
|------------------------------|---------------------------------------|---------------------------------------|--|
| <b>Office Action Summary</b> | <b>Application No.</b><br>10/546,627  | <b>Applicant(s)</b><br>BEUTER, BJOERN |  |
|                              | <b>Examiner</b><br>Michael J. Zanelli | <b>Art Unit</b><br>3661               |  |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 14 January 2008.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 10-19 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 10-19 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 22 August 2005 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>8/22/05</u> . | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

1. This application has been examined. The preliminary amendment filed 8/22/05 has been entered. Claims 10-19 are pending.
2. Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.
3. The IDS filed 8/22/05 has been considered.
4. The drawings are objected to because Figure 9 should be labeled "Prior Art" and blocks 200 and 300 require descriptive legends.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Art Unit: 3661

5. The disclosure is objected to because of the following informalities:

The reference to particular claim numbers should be removed at page 4 of the specification since the issued claims may differ from the currently pending claims both in numbering and substance.

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 10-19 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

A. As per claim 10, the claim is rejected as being incomplete for omitting essential structural cooperative relationships of elements, such omission amounting to a gap between the necessary structural connections. See MPEP § 2172.01. The claim appears to lack a clear nexus between the first module, the second module and the allocating layer relative to the other claimed elements (processor, memory, and sensor/actuator configuration). Note incorporation of claim 12 into claim 10 would overcome this deficiency.

B. As per claim 17, "at least of ... components" lacks antecedence (see claims 13 or 14 for support).

C. As per claim 18, the claim fails to clearly define the code of the "computer program" such that one of ordinary skill in the art could readily ascertain the metes and bounds of the invention. The claim merely recites "program code

Art Unit: 3661

*suitable*” for performing various functions without defining such code for the intended purposes.

D. All claims depending from a rejected base claim are also rejected as containing the same deficiencies.

7. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claim 18 is rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

Claim 18 is directed to a computer program which does not fall into one of the four statutory classes of invention. The examiner suggests inserting the word --product-- after “program” such that the claim clearly falls into the statutory class “manufacture”.

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 10, 11 and 17-19 are rejected under 35 U.S.C. 102(b) as being anticipated by Iwai et al. (6,236,910).

A. As per claims 10 and 18, Iwai discloses a control unit which controls a drive assembly based in part on computer program(s) stored within memory of the control unit. Figs. 1-3 show a processor (3), at least one memory element

Art Unit: 3661

(31) for controlling a drive assembly, a sensor/actuator configuration (210), a first module (200), a second module (100) and signal allocating layer (Figs. 2, 3: directional arrows between modules) wherein control occurs by communication between modules and the computer program(s). The closeness of the modules relative to the processor is given little patentable weight in distinguishing over Iwai since this limitation merely describes the physical arrangement of the various control unit elements. However, one could interpret Fig. 2 as showing module 200 "closer" to the processor than module 100.

B. As per claim 11, as above whereby the control unit would have inherently included a module (program code) which enabled a driver of the vehicle to control the drive assembly (i.e., accelerator pedal).

C. As per claim 17, as above whereby Fig. 3 shows functional elements (units) for controlling the drive assembly.

D. As per claim 19, as above whereby the drive assembly is an internal combustion engine of a vehicle (Fig. 1; col. 4, ln. 18-21).

9. Claims 12-16 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael J. Zanelli whose telephone number is (571)

Art Unit: 3661

272-6969. The examiner can normally be reached on Monday-Thursday 9:00 AM - 4:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas G. Black can be reached on (571) 272-6956. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Michael J. Zanelli/  
Primary Examiner  
Art Unit 3661